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APR 16 2003

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
QWEST COMMUNICATIONS CORPORATION)
AND QWEST INTERPRISE AMERICA, INC.,)
TRANSFERORS)
)
And)
)
COVAD COMMUNICATIONS COMPANY AND)
DIECA COMMUNICATIONS, INC.,)
TRANSFEREES)
)
Application for Authority)
to Transfer Control of Assets)

To: Competition Policy Division, Wireline Competition Bureau

**JOINT APPLICATION FOR
DOMESTIC TRANSFER OF CONTROL**

Pursuant to Section 214 of the Communications Act of 1934, as amended
("Communications Act" or "Act"), 47 U.S.C. § 214, and Sections 63.03 and 63.04 of the
Federal Communications Commission's ("Commission") rules, 47 C.F.R. §§ 63.03,
63.04, Qwest Communications Corporation ("QCC") and Qwest Interprise America, Inc.
("QIA") (collectively the "Transferors") and Covad Communications Company and
DIECA Communications, Inc. (collectively "Covad" or the "Transferees"), hereby
respectfully request authority to transfer control of QCC and QIA's domestic DSL
internet access customer base to Covad.

Transferors' View of Services Provided to Customers Being Sold

QCC and QIA currently provide a bundled DSL and internet access service to small and medium-sized business customers. Transferors believe that their bundled DSL and internet access service constitutes an information service, not a telecommunications service, and is therefore not subject to Section 214 or the other requirements of Title II of the Communications Act.¹ Transferors' position is supported by the language of the Communications Act itself,² and by the Commission's own rulings³ and statements.⁴ While Transferors believe this asset transfer is not governed by Title II of the Act, Transferors are seeking the Commission's approval for this transaction under Section 214

¹ See generally, Comments of Qwest Communications International Inc., submitted May 3, 2002, in response to the Commission's Notice of Proposed Rulemaking, CC Docket Nos. 02-33, 95-20, 98-10, *In the Matter of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, et al.*, 17 FCC Rcd 3019 (2002).

² The Act defines "information service" as "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications." 47 U.S.C. § 153(20). In addition, the Commission has equated the terms "information service" and "enhanced service." First Report and Order and Further Notice of Proposed Rulemaking, *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended*, 11 FCC Rcd 21905, 21955-56 ¶ 102 (1996). The Commission has defined "enhanced service" as any service "offered over common carrier transmission facilities . . . , which employ computer processing applications" and indicated that such services "are not regulated under title II of the Act." 47 C.F.R. § 64.702(a).

³ In its *Cable Modem Order*, the Commission concluded that bundled cable modem and internet access service "encompass [] the capability for 'generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications,'" and therefore meet the statutory definition of an "information service." Declaratory Ruling and Notice of Proposed Rulemaking, *in the Matter of Inquiry Concerning High-Speed Access to the Internet over Cable and Other Facilities*, 17 FCC Rcd 4798, 4822-23 ¶ 38 (2002).

⁴ In the Commission's 1998 Report to Congress, it concluded that "internet access services are appropriately classed as information, rather than telecommunications, services." Report to Congress, *In the Matter of Federal-State Joint Board on Universal Service*, 13 FCC Rcd 11501, 11536 ¶ 73 (1998).

out of an abundance of caution and in light of the Commission's handling of Sprint's recent discontinuance of a similar integrated DSL internet access service.⁵

Transferees' View of Services Provided to Customers Being Sold

As Covad has previously articulated before the Commission, Covad's high-speed Internet access services are "telecommunications services" regulated under Title II of the Act.⁶ Accordingly, Covad joins in the submission of this Application.

Description of the Transaction

On March 19, 2003, Transferors and Transferees entered into an Asset Purchase Agreement by which Covad agreed to purchase QCC and QIA's DSL internet access customer base.⁷ Transferors and Transferees believe that completion of this transaction will increase competition and consumer choice in the provision of high-speed data services. Approximately 99 percent of Transferors' customers are located in geographic areas where neither QCC, QIA nor any of their affiliates serves as the incumbent local exchange carrier, as that term is defined in section 251(h) of the Act, 47 U.S.C. § 251(h). As a result, apart from approximately one percent of affected customers, the bulk of this transaction qualifies for a presumption of streamlined treatment under Section 63.03(b) of the Commission's rules. Accordingly, QCC, QIA and Covad (collectively the

⁵ See Public Notice, 17 FCC Rcd 19718 (2002); Sprint Communications Co., Section 63.71 Application for the Discontinuance of Sprint's Business DSL Internet Access Service, filed October 3, 2002.

⁶ See generally, Comments of Covad Communications, *In the Matter of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, et al.*, CC Docket Nos. 02-33, 95-20, 98-10, 17 FCC Rcd 3019 (2002).

⁷ An additional 550 QIA customers located in California, Illinois, Massachusetts, Texas and Virginia, receive DSL internet access from DSLAMs located in their office buildings, instead of being serviced from central offices. These customers are not being transferred to Covad as part of this sale.

“Applicants”) request expedited review under the Commission’s domestic streamlining rules.

Pursuant to section 63.04(a) of the Commission’s rules, the Applicants hereby provide the following information in support of their Joint Application:

- (1) *The name, address and telephone number of each Applicant:*

TRANSFERORS:

QWEST COMMUNICATIONS CORPORATION AND
QWEST INTERPRISE AMERICA, INC.
1801 California Street
Denver, Colorado 80202
(303) 992-1400

TRANSFEREES:

COVAD COMMUNICATIONS COMPANY AND
DIECA COMMUNICATIONS, INC.
3420 Central Expressway
Santa Clara, California 95051
(408) 616-6500

- (2) *The government, state or territory under the laws of which each corporate or partnership Applicant is organized:*

Transferors:

Qwest Communications Corporation is a corporation formed under the laws of the State of Delaware. Qwest Interprise America, Inc., is a corporation formed under the laws of the State of Colorado.

Transferees:

Covad Communications Company is a corporation formed under the laws of the State of California. DIECA Communications, Inc., is a corporation formed under the laws of the State of Virginia.

- (3) *The name, title, post office address and telephone number of the officer or contact point, such as legal counsel, to whom correspondence concerning the Application is to be addressed:*

Transferors:

Aimee Jimenez, Esq.
Senior Attorney
Qwest Communications International Inc.
1801 California Street, Suite 4900
Denver, CO 80202
Telephone: 303-672-1774
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With copy to:

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1700 Lincoln Street, Suite 4100
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Email: humphrb@hro.com

Transferees:

Praveen Goyal
Senior Counsel for Government &
Regulatory Affairs
Covad Communications
600 14th St., NW
Suite 750
Washington, DC 20006
Tel. (202) 220-0400

- (4) *The name, address, citizenship and principal business of any person or entity that directly or indirectly owns at least 10% of the equity of each Applicant, and the percentage of equity owned by each of those entities (to the nearest one (1) percent):*

Transferors:

Name:	Qwest Communications International Inc.
Address:	1801 California Street, Denver, CO 80202
Citizenship:	United States
Principal Business:	Telecommunications
Percent Held:	100% indirect interest in QCC and QIA 100% direct interest in Qwest Services Corporation

Name: Qwest Services Corporation
Address: 1801 California Street, Denver, CO 80202
Citizenship: United States
Principal Business: Telecommunications
Percent Held: 100% direct interest in QCC and QIA

Name: Anschutz Company
Address: 555 17th Street, Suite 2400, Denver, CO 80202
Citizenship: United States
Principal Business: Transportation, natural resources, real estate, sports, entertainment, telecommunications
Percent Held: 16.6% direct interest in Qwest Communications International Inc.
16.6% indirect interest in QCC and QIA

Name: Phillip F. Anschutz
Address: 555 17th Street, Suite 2400, Denver, CO 80202
Citizenship: United States
Principal Business: Transportation, natural resources, real estate, sports, entertainment, telecommunications
Percent Held: 100% direct interest in Anschutz Company
16.6% indirect interest in QCC and QIA

Name: FMR Corp.
Address: 82 Devonshire Street, Boston, Massachusetts 02109
Citizenship: United States
Principal Business: Institutional Investor
Percent Held: 100% direct interest in Fidelity Management & Research Company
10.5% indirect interest in QCC and QIA

Name: Fidelity Management & Research Company
Address: 82 Devonshire Street, Boston, Massachusetts 02109
Citizenship: United States
Principal Business: Institutional Investor
Percent Held: 10.5% direct interest in Qwest Communications International Inc.
10.5% indirect interest QCC and QIA

Transferees:

Both Covad Communications Company and DIECA Communications, Inc., are wholly-owned subsidiaries of Covad Communications Group, Inc., a corporation formed under the laws of the State of Delaware. No

entity or individual has 10 percent or more ownership interest in Covad Communications Group, Inc. The address of Covad Communications Group, Inc., is 3420 Central Expressway, Santa Clara, California, 95051.

- (5) *Certification pursuant to §§ 1.2001 through 1.2003 of this chapter that no party to the Application is subject to denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988.*

As evidenced by the signatures to this Application, the Applicants respectively certify that no party to this Application is subject to denial of Federal benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1988.

- (6) *A description of the transaction:*

The transaction consists of the sale to Covad of QCC and QIA's business customers who purchase an integrated DSL and internet access service from QCC and QIA ("customer base"). The customer base is the asset being transferred, consisting of the customer contracts and customer account information. The customer base largely consists of small and medium-sized businesses in the states of California, Delaware, District of Columbia, Illinois, Indiana, Kansas, Maryland, Massachusetts, Michigan, Missouri, New Jersey, New York, Ohio, Pennsylvania, Texas and Virginia, who purchase a bundled DSL internet access service from QIA. These approximately 23,000 customers are located in areas where neither QIA nor any of its affiliates serves as the incumbent local exchange carrier, as that term is defined in section 251(h) of the Act.⁸

A small number of approximately 330 business customers being transferred purchase their bundled DSL internet access from QCC on a resale basis. QCC resells to these customers the underlying services offered by Covad and WorldCom. These customers are located in Alabama, Arizona, California, Colorado, Connecticut, Florida, Georgia, Illinois, Louisiana, Massachusetts, Michigan, Minnesota, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Utah, Virginia, Washington and Wisconsin. Some of these 330 customers are located in states (Arizona, Colorado, Minnesota, New Mexico, Oregon, Utah and Washington) where QCC's affiliate Qwest Corporation is the incumbent local exchange carrier.

Upon completion of the transaction, and in accordance with section 64.1120(e) of the Commission's rules, 47 C.F.R. § 64.1120(e), Covad will

⁸ An additional 550 out-of-region DSL internet access customers are not part of this transaction. See note 7, *supra*.

commence transitioning the customer base to its own nationwide data network.

- (7) *A description of the geographic areas in which the transferor and transferee (and their affiliates) offer domestic telecommunications services, and what services are provided in each area:*

Transferors:

Transferors QCC and QIA are affiliate companies that are 100 percent owned by Qwest Services Corporation, which is 100 percent owned by Qwest Communications International Inc.

QCC provides interstate, interLATA services as a facilities-based carrier and on a resale basis, operator services, and competitive local exchange services out-of-region, i.e., outside of the region in which Qwest Corporation provides local exchange service as the incumbent carrier. QCC provides bundled DSL and internet access service as a reseller in the states identified in Section (6). QIA provides out-of-region frame relay and private line services. QIA provides bundled DSL and internet access service to out-of-region customers in the states identified in Section (6).

QCC and QIA have several affiliates that also provide domestic telecommunications services. In particular, Qwest Corporation is a local exchange carrier that provides local exchange telecommunications, exchange access, information access, data, wireless, and intraLATA long distance services pursuant to tariff and contract in the 14 states of Arizona, Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming ("in-region"). Qwest LD Corp. provides interstate, interLATA resale services in Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington, and Wyoming. Qwest Wireless, L.L.C. provides commercial mobile radio service within Qwest Corporation's in-region states. USLD Communications, Inc. provides interstate, interLATA services and operator services out-of-region.

Transferees:

Covad currently provides facilities-based high-speed data telecommunications services to more than 417,000 residential and business customers in Alabama, Arizona, California, Colorado, Connecticut, the District of Columbia, Delaware, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Massachusetts, Maryland, Michigan, Minnesota, Missouri, North Carolina, New Hampshire, New Jersey, New Mexico, Nevada, New York, Ohio, Oregon, Pennsylvania,

Rhode Island, Tennessee, Texas, Utah, Virginia, Washington, and Wisconsin.

- (8) *A statement as to how the Application fits into one or more of the presumptive streamlined categories in this section or why it is otherwise appropriate for streamlined treatment:*

The Applicants respectfully request streamlined review of this application. This application raises no novel question of fact, law, or public policy. Furthermore, this transaction is unlikely to raise the potential of any public interest harm. In fact, as explained below, this transaction will benefit competition and long-term consumer choice for high-speed data services. The Commission has explicitly stated that “all applications are eligible for streamlined processing” and could be afforded streamlined treatment on a case-by-case basis.⁹

No market share concern is implicated in this transaction. The vast majority of customers being acquired by Covad, approximately 23,000, are located outside of the states where QCC and QIA’s affiliate, Qwest Corporation, is the incumbent local exchange carrier. Thus, apart from the small minority of affected customers who are in-region (namely, some portion of QCC’s 330 resale customers), the Applicants qualify for presumptive streamlined treatment under Section 63.03(b)(ii) of the Commission’s domestic streamlining rules. The fact that 23,000 of the customers being transferred qualify for presumptive streamlined treatment, as compared with some portion of QCC’s 330 resale customers, weighs strongly in favor of granting streamlined processing to this application.

Furthermore, because the transaction involves the sale of customers to Covad, a non-dominant competitor to Qwest, the fact that some portion of QCC’s 330 resale customers are located in-region works to reduce, not increase Qwest or its affiliates’ market share in-region. The effect of this transaction will be to increase competition in both geographic sectors – in-region and out-of-region. For these reasons, the Commission should afford the Applicants streamlined treatment.

- (9) *Identification of all other Commission applications related to the same transaction:*

There are no pending applications by the Applicants related to this transaction.

⁹ See *In the Matter of Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations*, Report and Order, 17 FCC Rcd 5517, 5535 ¶ 34 (2002).

- (10) *A statement of whether the Applicants are requesting special consideration because either party to the transaction is facing imminent business failure:*

The Applicants are not requesting special consideration.

- (11) *Identification of any separately filed waiver requests being sought in conjunction with the transaction:*

The Applicants have not separately filed any waiver request in conjunction with the transaction described herein.

- (12) *A statement showing how grant of the Application will serve the public interest, convenience and necessity, including any additional information that may be necessary to show the effect of the proposed transaction on competition in domestic markets:*

The Applicants respectfully submit that approval by the Commission of the transaction described herein would serve the public interest, convenience and necessity, as required by Section 214 of the Act, and the Commission's rules. Approval of this transaction will immediately benefit the Applicants and in the long run increase competition and consumer choice in the provision of high-speed services. The transaction provides the Transferors increased liquidity. The transaction will allow Covad (the Transferees) to realize greater efficiencies and economies of scale in the provision of high-speed services to its customers. As a result, Covad will be able to compete more effectively to provide high-speed data services. Increased competition will lead to lower prices, better service, and increased choice for consumers. In addition, Covad has developed a special program called Covad Safety Net to help members of the customer base transition to Covad's network and minimize any service disruptions. Accordingly, the proposed transaction benefits the Applicants and consumers alike and serves the long-term public interest.

Wherefore, in consideration of the foregoing, the Applicants respectfully request that the transfer of control of QCC and QIA's DSL internet access customer base to Covad be approved.

Respectfully submitted,

QWEST COMMUNICATIONS CORPORATION
AND QWEST INTERPRISE AMERICA, INC.

By: 

Aimee Jimenez

Senior Attorney

Qwest Communications International Inc.

and

COVAD COMMUNICATIONS COMPANY AND
DIECA COMMUNICATIONS, INC.

By: 

Praveen Goyal

Senior Counsel for Government &
Regulatory Affairs

Covad Communications

Dated: April 15, 2003